IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

I.T.R. No.228 of 1995
Date of decision: 06.11.2006

Commissioner of Income Tax (Central), Ludhiana.

---Applicant

Vs.

Rita Mechanical Works, Ludhiana.

-----Respondent

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL

HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mr. S.K. Garg Narwana, Advocate
for the revenue.

ORDER:

Following questions of law have been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, arising out of its order dated 10.11.1994 in I.T.A. No.1392/Chandi/89 in respect of assessment year 1986-87:-

> "1. Whether, on the facts and in the circumstances of the case, the ITAT was right in law in allowing investment allowance on tubewells, which is in reality a structure – a part of the building?
>
> 2. Whether, on the facts and in the circumstances of the case, the ITAT was right in law in holding that the first proviso to section 43B inserted w.e.f. 1.4.1988, has retrospective application and that the undischarged Sales-tax liability could not be disallowed u/s 43B, if paid before due date prescribed u/s 139(1)?"

We find that the issue is covered against the revenue and in favour of the assessee by the judgment of Hon'ble Supreme Court in ***Allied Motors (P) Limited v. Commissioner of Income Tax*** 1997 (224) ITR 677.

Following the above judgment of the Hon'ble Supreme Court, we have decided the issue against the revenue and in favour of the assessee vide our order dated 5.9.2006 in ITR No.94 of 1996, ***The Commissioner of Income tax (C), Ludhiana v. M/s Avery Cycle Inds. Pvt. Limited, Ludhiana.***.

Accordingly, the question is answered against the revenue and in favour of the assessee.

(ADARSH KUMAR GOEL)
JUDGE

November 06, 2006
ashwani

(RAJESH BINDAL)
JUDGE